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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,539	04/22/2004	William Taylor	20103/030294	7334

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AT&T Legal Department - HFZ

ATTN. Patent Docketing

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EXAMINER

SHIVERS, ASHLEY L

ART UNIT

PAPER NUMBER

2419

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DELIVERY MODE

06/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/829,539</p>	<p>Applicant(s) TAYLOR ET AL.</p>	
	<p>Examiner ASHLEY L. SHIVERS</p>	<p>Art Unit 2419</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-11, 15-23 and 26-32.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Chirag G Shah/
Supervisory Patent Examiner, Art Unit 2419

Continuation of 11. does NOT place the application in condition for allowance because: On pages 12-13 of the Applicants' Response, Applicants state that U.S. Application Serial No. 10/348,592 describes what is meant by provisioning a circuit in a data network without manual intervention.

Examiner requests that applicants amend the specification to incorporate this portion into the instant application.

On pages 14-16 of the Applicants' Response, Applicants state that Wilkes does not teach of provisioning of the at least one logical circuit through a first local access and transport area, a second local access and transport area, and an inter-exchange carrier, wherein the at least one logical circuit includes first variable communication paths to route data through the second local access and transport area, and fixed communication paths to route the data between the first local access and transport area, the second local access and transport area, and the inter-exchange carrier.

Examiner respectfully disagrees in the Sibbitt teaches of the controller looking for channels (paths) of the communication facilities between the endpoints requested which will be idle during the prospective time period (requested time for provisioning). Once the path is identified, then available bandwidth through the path must be selected and reserved. Once this is accomplished, the prospective routing is scheduled for use by the initiating end user during the requested time period (See col. 2, lines 40-46 and 49-53). Sibbitt states that at the scheduled period of time, the controller begins an assessment of the continued availability of the previously selected channels to insure that quality communications will be possible during the scheduled period. Connections are then made through the various nodes at the proper time to insure that the end user has the requested bandwidth capability between the selected endpoint locations (See col. 2, lines 54-61). The controller reserves certain internodal facilities for fixed determined periods of time (See col. 3, lines 35-42). Examiner stated that Sibbitt teaches of the provisioning and reserving of the various facilities needed for the connection but does not explicitly specify that the facilities are LATA and IEC, however the two customers attached to DACS(A) can be interpreted as the first LATA (See Fig. 1) and the customer premises attached to DACS(B) or DACS(C) can be part of second LATA. Wilkes is used to specifically show the specific facilities used to communicate the traffic that is used to route the traffic and shows the paths between the various facilities (See Fig. 3). The first LATA of Wilkes can be equated to the customer premises connected to DACS(A) of Sibbitt and the second LATA of Wilkes can be equated to the customer premises of DACS(B) or DACS(C). The IEC of Wilkes can be equated to the DACS of Sibbitt as the DACS is located within the IEC.

On pages 16-17 of the Applicants' Response, Applicants state that Naven does not teach or suggest selecting a first maintenance window to provision at least one logical circuit based on a first time of receipt being within a first time of receipt range corresponding to a first maintenance window, when a second time of receipt corresponding to the second customer order is within the first time of receipt range, selecting the first maintenance window to provision a second logical circuit corresponding to a second customer order, and when the second time of receipt corresponding to the second customer order is not within the first time of receipt range, selecting a second maintenance window to provision the second logical circuit.

Examiner respectfully disagrees in that Sibbitt teaches of receiving customer orders at two different times of receipt (Schedule ID 80, 111 and 113 and the corresponding Request Date/Time column; See Fig. 10). Sibbitt shows some of the requests being received in different months which could be interpreted as the maintenance windows (i.e., November 3 to December 3, 1989), wherein the first maintenance window is based on the first time of receipt range (November 3 to December 3, 1989) and the first order is received at a first time of receipt (Nov. 3, 1989) and the second order is received at second time of receipt (Dec. 1, 1989). If the second time of receipt is within the first time of receipt range it corresponds to the first maintenance window (January 1, 1990) and if it has a time of receipt outside of the first range (March 12, 1990) then it has a second maintenance window (March 13, 1990). Since Sibbitt doesn't explicitly state how to determine the range, Examiner relies on Naven to show the act of scheduling events during two different intervals (implemented in the master and slave calendars; See Abstract lines 3-5).